



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, MNDC , FF

Introduction

This Dispute Resolution hearing was convened to deal with both an application by the tenant and a cross application by the landlord. The tenant was seeking double the return of the \$280.00 security deposit paid, monetary compensation for the landlord's failure to supply a dryer and furnace filters, the return of \$105.00 for utilities paid from the previous tenancy and a refund of \$1,050.00 for a rent increase not properly implemented in accordance with the Act. The landlord was seeking monetary compensation for \$275.71 owed for utilities at the end of the tenancy and \$280.00 for "loss of wages".

Both parties appeared at the hearing and gave evidence.

Issues to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to return of double the security deposit pursuant to section 38 of the Act.
- Whether the tenant is entitled to damages for wrongfully charged utility costs, loss of use of a dryer and the cost of furnace filters.
- Whether the tenant is entitled to a refund rent due to a noncompliant rent increase imposed by the landlord.
- Whether the landlord is entitled to monetary compensation for utilities owed by the tenant at the end of the tenancy.
- Whether the landlord is entitled to other damages for loss of wages.

Burden of Proof

The tenant has the burden of proof to establish the tenant's monetary claims. The landlord has the burden of proof to establish the landlord's monetary claims.

Background and Evidence

The parties testified that this tenancy originally began in August 2009, when the tenant took over the rental unit from a relative. Rent was \$560.00. According to the testimony, the \$280.00 security deposit paid by the previous tenant in 2004 was credited to this tenant in lieu of payment of their security deposit.

No written tenancy agreement was created by the landlord for this tenancy. However, the landlord submitted into evidence a copy of their tenancy agreement with the prior tenant and testified that all agreed from the start that this new tenancy would have the same tenancy terms as the previous tenancy.

Tenant's Claims

Both parties agreed that the tenant had paid a utility bill for \$105.00 stemming from the previous tenancy. The tenant testified that this was based on a promise by the landlord that they would not have to pay their final utility bill when the tenancy ended. The tenant submitted a copy of the cheque verifying the payment made in 2009 and the tenant is seeking a refund.

However, the landlord testified that there was never any promise with respect to the landlord agreeing to waive the final utility payment at the end of the tenancy based on the tenant's payment of the \$105.00 in outstanding utilities from the prior tenancy. The landlord testified that this bill was paid by the tenant because the tenant had evidently reached some kind of agreement with the previous occupant. The landlord explained that the agreement entailed consent by the tenant to pay the outstanding \$105.00 utility bill to the landlord as part of the security deposit credit arrangement between the tenant and departing occupant, who was the tenant's relative moving out at the time. The landlord disagreed that the tenant should be reimbursed.

The tenant testified that the tenancy ended on February 28, 2012 and when the landlord failed to return the security deposit, they made an application for dispute resolution. The tenant testified that the landlord later repaid \$289.91, but this refund occurred beyond the 15-day deadline imposed by the Act. The tenant is therefore requesting an additional \$280.00, representing double the original deposit as provided by the Act.

The landlord disputed the tenant's entitlement to the return of double the deposit and pointed out that the tenants had never actually paid any deposit at all. Therefore, according to the landlord, the security deposit actually belonged to the original tenant who occupied the unit before these tenants moved in. The landlord stated that they were quite willing to refund the deposit to the original occupant who paid it, but not to pay these funds to the applicant tenants who had never given the landlord any deposit

in the first place. The landlord took the position that this tenant was not entitled to any refund at all. However, the landlord had nonetheless repaid the \$280.00 security deposit plus interest of \$9.91 in full.

With respect to the improper rent increase, the tenant testified that at one point during the tenancy the landlord made a request for additional rent, but never issued a valid notice of rent increase on the proper form. The tenant testified that they paid an additional \$75.00 per month for 14 months during the tenancy. The tenant is seeking a refund of \$1,050.00.

The landlord acknowledged that no rent increase notice was issued on the approved RTB form and also acknowledged that the amount of additional rent collected did exceed the percentage permitted under the Act. However, the landlord pointed out that no increase had ever been imposed on the rent for several years, since 2004. The landlord also objected to the tenant's claim for a rent refund on the basis that the tenant had willingly agreed to pay additional rent, set the amount themselves and, in fact, paid this additional rent without complaint for over a year. The landlord was disputing the tenant's entitlement to the \$1,050.00 being claimed as an illegal rent increase.

The tenant testified that the dryer in the unit had never functioned properly and the tenant felt that they should be entitled to a rent abatement for loss of facilities and services to reflect the devalued tenancy. The tenant was also requesting reimbursement for purchase of furnace filters due to the landlord's failure to maintain the furnace and change the filters.

The landlord testified that no dryer was ever provided under the tenancy agreement, only use of a washer. The landlord pointed out the written tenancy agreement from the previous occupant clearly showed that only a washer was provided as part of the tenancy and a dryer was never part of the contract. With respect to the issue of the furnace, the landlord testified that the furnace was properly maintained by the landlord and the tenant had never expressed any concern about the need for new filters.

Landlord's Claim

The landlord was claiming compensation for outstanding utilities owed for the unit for the period during which the tenant had occupied the rental unit. This included the final month of occupancy. The landlord had submitted into evidence the utility invoices to verify the amount being claimed, which was \$275.71.

The tenant did not dispute that the utilities were owed, but stated that they had withheld payment on the basis of the fact that they were required to pay the previous occupant's

final bill when they took possession in August 2009 and therefore felt that it was agreed that they would not be obligated to pay their final utility bill on moving out.

Analysis

Security Deposit Claim by Tenant

Based on the evidence, I accept that the original security deposit paid by the tenant's relative for the previous tenancy, was transferred to this tenant in August 2009. This is evidenced by the fact that the landlord utilized and continued all the previous tenancy agreement terms, did not issue a refund of the deposit to the previously departing tenant and did not collect or require an additional security deposit from the applicant tenants when they moved in. I find that the existing security deposit was retained as a credit to be held in trust by the landlord on behalf of this tenant.

Section 38(1) of the Act states that within 15 days of the end of the tenancy and receiving the tenant's forwarding address a landlord must either:

- repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations; **Or**
- make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit or making application to retain it within 15 days, the landlord may not make a claim against the security deposit and must pay the tenant double the amount of the security deposit.

I find that the landlord retained the tenant's security deposit beyond 15 days, and although they did repay the tenant an amount of \$289.91 which was the deposit plus interest, this occurred after 15 days.

Based on the above, I find that the tenant is entitled to receive double the deposit wrongfully retained by the landlord, and is entitled to an additional \$280.00 beyond the amount already refunded.

Claims for Damages and Compensation

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss **bears the burden of proof** and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on each claimant to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party.

I find that the tenant's claim for a rent abatement allegedly due to the landlord's failure to provide a working dryer for the tenant's use, must be proven to be based on a valid and enforceable term in the tenancy agreement. However, there was no written tenancy agreement between these two parties. That being said, I accept the landlord's position that all of the conforming terms in the previous tenancy agreement from the earlier tenancy that began in 2004 were applicable to this tenancy beginning in August 2009. I find that the tenancy terms clearly did not include the use of a dryer.

With respect to the tenant's claim that the landlord did not properly maintain the furnace and their allegations that this fact caused them to incur costs for furnace filters, I find that section 32 of the Act imposes responsibilities on the landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

I find that the tenant has not provided evidence that would support their allegation that the landlord was neglectful and failed to meet the landlord's obligations under section 32 of the Act.

For the reasons discussed above, I find that there is no merit to the tenant's claims for a rent abatement for loss of the dryer nor to the tenant's claim for compensation for the purchase of furnace filters. I find that these monetary claims must be dismissed.

With respect to the tenant's claim for reimbursement or credit for the \$105.00 paid for utility costs incurred by the previous tenant, I accept the evidence that the tenant did make a payment to the landlord for utilities not used by this tenant. I do not accept the landlord's argument that this was pursuant to an agreement between the former and current tenant at the time because I find that the landlord was not able to furnish adequate proof to establish that the landlord accepted the funds under any such agreement. The existing evidence only proves that the tenant did pay the outstanding utility bill at the start of the tenancy. The verbal testimony about the circumstances was disputed and without any witness statements or documentary evidence to support the landlord's position, the burden of proof could not be met.

For this reason, I find that the tenant is entitled to be paid back the \$105.00 paid to the landlord for utilities not used by the tenant.

With respect to the landlord's claim for utilities owed at the end of the tenancy, I fully accept the landlord's evidence proving that the tenant owed \$275.71 for unpaid utilities and the landlord is entitled to be reimbursed for this amount.

The landlord's claim for \$280.00 for loss of wages does not meet all elements of the test for damages and I find that it must be dismissed.

Claim for Overpaid Rent

With respect to the tenant's claim for over-paid rent, I find that the evidence confirmed that additional rent was collected for 14 months. Section 43(1) of the Act states that a landlord may impose a rent increase only up to the amount (a) calculated in accordance with the regulations, (b) ordered by the director on an application under subsection (3), or (c) agreed to by the tenant in writing.

Even if it was proven that the parties both agreed in writing to a rent increase that exceeded the percentage allowed under the Act and Regulation, section 41 of the Act states that the landlord is still required to follow the process provided by the Act in implementing a rent increase. Section 42(2) and 42(3) of the Act states that a landlord must give a tenant a Notice of Rent Increase at least 3 months before the effective date of the increase and the Notice of the Rent Increase must be in the approved form.

In this instance, I find that there was no evidence of the written consent by the tenant. Furthermore, I find that the landlord did not follow the proper process as described in section 42 by failing to serve the tenant with the formal Notice of Rent Increase at least three months in advance of the effective date, and neglecting to issue the Notice on the approved form.

Section 43(5) states, "*If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase*". Based on the Act, I find that the tenant is therefore entitled to be compensated in the amount of \$1,050.00 for additional rent of \$75.00 collected over 14 months.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the tenant is entitled to monetary compensation totalling \$1,435.00, comprised of \$208.00 for double the security deposit, \$105.00 for utilities collected at the start of the tenancy, and \$1,050.00 excessive rent collected not in compliance with the Act.

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to a monetary claim of \$275.71 for utilities genuinely owed by the tenant.

In setting off the amounts, I hereby grant a monetary order to the tenant for the difference in the amount of \$1,159.29. This order must be served on the landlord and if unpaid may be enforced in Small Claims Court.

The remainder of the tenant's and the landlord's applications are dismissed without leave and each party is responsible for paying their own filing costs.

This decision is final and binding and made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 07, 2012.

Residential Tenancy Branch